

**Assembly Bill No. 856**

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Passed the Assembly     September 13, 2001

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*Chief Clerk of the Assembly*

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Passed the Senate     September 12, 2001

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day of  
\_\_\_\_\_, 2001, at \_\_\_\_\_ o'clock \_\_M.

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*Private Secretary of the Governor*

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## CHAPTER \_\_\_\_\_

An act to amend Sections 19455 and 19481.5 of the Business and Professions Code, relating to horse racing.

## LEGISLATIVE COUNSEL'S DIGEST

AB 856, Wesson. Horse racing.

Provisions adopted in the 2001 portion of the 2001–02 Regular Session, which becomes effective January 1, 2002, direct the California Horse Racing Board to oversee the conduct of a union and multiemployer collective bargaining agent recognition procedure for backstretch employees. They also provide that within 120 days of the effective date of those sections the board shall also adopt emergency regulations to establish standards governing the employee housing provided to backstretch personnel at licensed racetracks. No license shall be issued to a racing association to conduct a horse race meeting unless the board has inspected the housing conditions that exist on the racetrack's backstretch and determined the living conditions to be in compliance with the standards established by the board.

This bill would amend these provision by deleting a provision that authorizes the board to contract with the Agricultural Labor Relations Board and by adding specifics concerning the authority of arbitrators used to resolve disputes between parties to the collective bargaining agreements created under these provisions. This bill would also amend provisions relating to inspection of the living conditions of backstretch workers by providing that the board may be assisted by a local building department or other local entity designated by the jurisdiction in which the racetrack is located in conducting these annual inspections to ensure compliance with the standards it has established.

*The people of the State of California do enact as follows:*

SECTION 1. Section 19455 of the Business and Professions Code, as added by Chapter 198 of the Statutes of 2001, is amended to read:

19455. (a) The Legislature finds and declares that Section 923 of the Labor Code recognizes that it is necessary that the



individual worker have full freedom of association, self-organization, and designation of representatives of his or her own choosing, to negotiate the terms and conditions of his or her employment, and that he or she shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining.

(b) The Legislature finds that the National Labor Relations Board has formally declined to assert jurisdiction over horse racing because of extensive state control over the industry, the dominant pattern of sporadic short-term employment which poses problems for the effective enforcement of the National Labor Relations Act, and a unique and special relationship that has developed between the states and the industry.

(c) It is the intent of the Legislature to establish an orderly procedure for backstretch employees to exercise their statutory rights to organize a labor union, in order to reduce the prospect of any strikes, disruptions, or economic action that would interfere with the operation of horse racing meetings in California.

(d) Except as provided in subdivision (e), the board shall oversee the conduct of a union recognition procedure for backstretch employees under the following conditions:

(1) Employees shall have the right to join, or refuse to join, a labor organization for purposes of collective bargaining and mutual aid and protection. Existing state-recognized organizations of trainers or horsemen established pursuant to the Horse Racing Law shall not use funds derived or distributed from parimutuel wagering pursuant to state law to advocate or advance any position with respect to unionization of employees. Individual trainers and horsemen, and their agents, shall not coerce or threaten any employee of any trainer or horseman because of the exercise of rights pursuant to this article. No employee shall be discharged or discriminated against for expressing any opinion concerning the selection of a labor union or collective bargaining agent for employees under this article. No trainer or horseman, or group of trainers or horsemen, shall dominate or interfere with the formation or administration of any labor organization established under this article nor contribute financial or other support to it.



(2) The labor union and its representatives shall not coerce or threaten any employee of any trainer or horseman because of the exercise of rights pursuant to this article.

(3) Notwithstanding any other provision of law, within 30 days of a request by a bona fide labor organization representing workers in the horse racing industry in California, accompanied by a petition of 125 licensed backstretch workers, the board shall provide the labor organization with a list of all backstretch workers including the type of licenses they hold, their employer, the location at which they are employed, and their address and telephone number. The board may require of any trainer licensee information in the licensee's possession necessary to comply with this requirement. The labor union shall use this list solely for the purposes of this article, and maintain it in a manner, as the board may require, to preserve the integrity of horse racing. The board may impose an appropriate penalty for any other use.

(4) Every licensed trainer who employs backstretch employees shall file with the board, not later than February 1, 2002, and, within seven days of the commencement of each race meeting thereafter, a complete and accurate list of the names of its backstretch workers. In addition, every trainer shall file with the board a complete, accurate, and updated list within seven days of any changes which occur to the most recently filed list. The lists described in this section, together with any updates thereto, shall be provided within 72 hours after receipt by the board, to any bona fide labor organization which has requested copies thereof and submitted a petition containing the names of 125 backstretch workers pursuant to paragraph (3). Any such request need only be made one time and the board shall thereafter be required to provide these lists and any updates thereto in accordance with the provisions of this section so long as a bona fide labor organization seeks to represent licensed backstretch workers.

(5) The labor union may obtain board recognition as the exclusive bargaining agent for employees of employers pursuant to the provisions and procedures described in paragraph (8).

(6) For the purposes of this article:

(A) "Backstretch employee" or "backstretch worker" means a person licensed by the board pursuant to subdivision (c) of Section 1481 of Division 4 of Title 4 of the California Code of Regulations.



(B) “Multiemployer bargaining unit” means any bargaining unit created and recognized pursuant to the terms of clause (iii) of subparagraph (A) of paragraph (8).

(C) “Approved election unit” means any election unit created and recognized pursuant to paragraph (7).

(7) There are four election units created and recognized pursuant to this section, as follows:

(A) Backstretch employees working for trainers of thoroughbred horses stabled at licensed racetracks, including fairs and approved auxiliary training facilities in the combined central and southern zones.

(B) Backstretch employees working for trainers of thoroughbred horses stabled at licensed racetracks, including fairs and approved auxiliary training facilities in the northern zone.

(C) Backstretch employees working for trainers of quarter horses stabled at licensed racetracks and approved auxiliary training facilities in the combined central and southern zones.

(D) Backstretch employees working for trainers of harness horses stabled at licensed racetracks, including fairs and approved auxiliary training facilities in the northern zone.

The board shall use the California State Mediation and Conciliation Service for all appropriate purposes of this act, including operations related to the conduct of recognition procedures and elections.

(8) (A) With respect to backstretch workers, a labor organization seeking recognition as the collective bargaining agent for these workers shall collect signed cards indicating individual worker’s intent to be represented by that organization for collective bargaining purposes and submit those cards to the California State Mediation and Conciliation Service for review and validation. When the labor organization is in receipt of cards signed by workers equaling at least 30 percent of the employees in an election unit described in paragraph (4), the California State Mediation and Conciliation Service shall conduct a secret ballot election with respect to the election unit as soon as is practicable thereafter, but in no event more than 30 calendar days after validation by the service of the cards.

Those backstretch employees entitled to vote in the election shall be those who appear on the licensed trainer’s most recent list described in paragraph (3). However, each employer may update



his or her list not more than 72 hours prior to the election. If it is determined by the stewards pursuant to the provisions in paragraph (11), that the employer filed an inaccurate or erroneous list with a willful intention to manipulate the results of an election, and that the inaccuracy or error may have affected the outcome of the election, the stewards shall decree that the employer lost the election, regardless of the actual outcome thereof, and the stewards shall issue an order to the trainer to negotiate with the union.

(i) Any election shall be conducted by the California State Mediation and Conciliation Service under rules established by the service consistent with standard practice. The rules shall be established no more than 60 days after the effective date of this section, shall be made available to the bona fide labor union and employers of backstretch employees, and shall be exempt from the Administrative Procedure Act. The rules shall provide for a secret ballot system for the conduct of the election pursuant to which ballots cast by backstretch employees of individual employers shall be cast by insertion into envelopes appropriately identified with respect to each employer. The envelopes shall be collected and tabulated in secret by the service, subject to observation by one representative designated by the bona fide labor organization and one representative designated by the organization representing trainers pursuant to subdivision (a) of Section 19613.2. Upon completion of the tabulation, the service shall issue a report certifying those employers, the majority of whose employees who participated in the election voted in favor of representation by the union. Those employers so certified shall be required to bargain with the labor union pursuant to this subdivision. All other employers shall not be required to negotiate with the union and there shall not be another election with respect to those employers for at least one year from the date of the prior election. The service shall not make public the numerical tabulation of votes by employer.

(ii) Protests over challenged ballots shall be resolved by the service in a consolidated hearing commencing no later than three business days after the election.

(iii) Within 45 days of the certification of the results of the election by the service to the board, those trainers who are required to bargain pursuant to this subparagraph may form multiple employer bargaining units in accordance with the provisions of



this subdivision. Further, the organization representing trainers pursuant to subdivision (a) of Section 19613.2 shall conduct a meeting regarding the formulation of multiple employer bargaining units within five days of the certification of the results of the election. For licensed trainers described in subparagraph (A) of paragraph (7), the minimum number of backstretch employees employed by licensed trainers comprising the multiple employer bargaining unit as of the date of the election shall be the lesser of 100 employees or 10 percent of the total employees subject to bargaining. For licensed trainers described in subparagraphs (B), (C), and (D), of paragraph (7), the minimum number of backstretch employees employed by licensed trainers comprising the multiple employer bargaining unit as of the date of the election shall be the lesser of 50 employees or 10 percent of the total employees subject to bargaining. The minimum number of backstretch employees employed by licensed trainers in order to qualify as a multiple employer bargaining unit pursuant to this subdivision may, with the consent of the recognized labor union, be reduced. On or before the 45th day following the certification of the results of the election, each representative of a multiple employer bargaining unit formed pursuant to this subdivision shall notify the board and the exclusive collective bargaining agent, in writing, that a unit has been formed, disclose the names of the licensed trainers which comprise the unit, and indicate the number and names of the backstretch employees which are employed by the licensed trainers comprising the unit. Except to join another multiple employer bargaining unit, without the consent of the bona fide labor organization, a trainer who has elected to join a multiple employer bargaining unit may not thereafter elect to resign from the unit except within a 30-day period prior to the date of the expiration of the collective bargaining agreement resulting from the negotiations. The employees of a licensed trainer who has resigned from a multiple employer bargaining unit and has not joined another unit, shall not be entitled to petition to decertify the union for a period of one year from the date of the expiration of the collective bargaining agreement which resulted from the negotiation between the union and the multiple employer bargaining unit of which he or she was formerly a member and which was in effect at the time of the trainer's resignation. Upon completion and certification of the election results the union shall



be recognized as the exclusive collective bargaining agent for those workers whose employers are required to bargain, and the executive director of the board shall issue an order to affected employers to begin good faith negotiations for approval of employment agreements pursuant to the procedures set forth in this section.

(B) If an individual employer of backstretch workers declines to be represented in the multiemployer collective bargaining procedure described in clause (iii), the board shall issue an order to begin good faith negotiations for employment agreements on an individual employer basis. The board may provide mediation and conciliation services upon request of the parties at any time. If an employer is required under this subparagraph to collectively bargain with the union, and the parties do not reach an agreement within 90 days of the order, the board shall require the parties to participate in mandatory mediation and conciliation services for a period of 30 days. If no agreement results from this mediation, either or both parties may declare an impasse. Upon a party's declaration of an impasse, the executive director of the board shall appoint an arbitrator in the manner described in paragraph (11) to determine the issues and issue a final and binding order establishing the terms of a collective bargaining agreement.

(9) No labor agreement under this article shall apply to any trainer or horseman with respect to employment associated with fair meetings prior to January 1, 2003. After this date, employees shall be added by accretion into an existing contract where applicable. For racing meetings conducted in the central and southern zones during the first three months of any calendar year and for fair racing meetings, this section shall not apply to trainers who normally reside and work outside of California and who are engaged in racing in this state for a limited period of time, not exceeding 90 racing days in any calendar year. For all other race meeting conducted during any calendar year, this section shall not apply to trainers, backstretch workers, or both who normally reside and work outside of California and without are engaged in racing in this state for a limited period of time, not exceeding 50 racing days in any calendar year.

(10) Except as provided in subparagraph (A) of paragraph (8), at any time subsequent to the expiration of an agreement under paragraph (8), when the agreement is not in effect, the board may





recognize a majority interest, obtained during this period in the same manner as union recognition of employees, within a multiple employer bargaining unit who no longer desire to be represented by the union, and withdraw the recognition granted pursuant to this section from that union. An employer may inform his or her employees that a process for decertification exists and direct them to the board for information. However any card, signature, vote, or other indicator obtained for this purpose by means of coercion or threat or with the assistance or inducement of any employer shall be invalid.

(11) Disputes, other than disputes concerning the operation and application of ongoing contracts, disputes subject to binding interest arbitration pursuant to subparagraph (B) of paragraph (8), and economic disputes arising in the context of multiemployer bargaining pursuant to subparagraph (A) of paragraph (8), but including disputes concerning the rights established in paragraphs (1) and (2), upon complaint shall be adjudicated by the stewards. The stewards shall have the authority to order any remedy, including reinstatement of employment, injunctive relief, damages, and attorney's fees. An investigation and adjudication by the stewards shall be concluded as expeditiously as possible, consistent with applicable standards of due process. In addition, the board may require the parties to submit the issue to binding arbitration subject to judicial review in the same manner as decisions of the board. Disputes subject to this paragraph include disputes involving any backstretch employee or group of employees, and any trainer or group of trainers.

(12) Upon submission of a complaint to binding arbitration under any provision of this article, the executive director of the board shall select an arbitrator from a panel of professional arbitrators with expertise in labor negotiations selected by the California State Mediation and Conciliation Service or from a panel identified in collective bargaining agreements between labor organizations and employers in the horse racing industry in California, or both. The arbitrators selected by the service or identified in collective bargaining agreements shall be available to resolve the matter expeditiously. The arbitrator selected by the executive director shall have the authority to convene an immediate hearing and require the parties to exercise all due diligence in promptly attending to the issue in controversy. In all



matters pertaining to the rights established by this article, an arbitrator shall have the authority to fashion an appropriate remedy, including reinstatement of employment, injunctive relief, damages, and attorney's fees, and issuance of a make-whole remedy in the event of a persistent failure of a party to bargain in good faith. The board may take any administrative action within its authority to ensure compliance with decisions of arbitrators authorized by this section. Either party may also bring an action in state court to compel a party to go into arbitration or to enforce the decision of an arbitrator. Costs of arbitration shall be shared equally by the parties, and any party shall be entitled to recover any reasonable fees or costs incurred in securing compliance with or enforcement of an award or order of the arbitrator.

(e) Nothing in this section shall prevent a labor union and an individual trainer, or any group of trainers, from entering into a mutually acceptable agreement, which may substitute for the requirements of subdivision (d), for union organizing of employees of the horsemen or trainers. Nothing in this article shall be interpreted to require representative parties in negotiation to enter into any labor agreement, as long as each party is negotiating in a good faith effort to reach an agreement.

SEC. 2. Section 19481.5 of the Business and Professions Code, as added by Chapter 198 of the Statutes of 2001, is amended to read:

19481.5. (a) Notwithstanding any other provision of law, no license shall be issued to conduct a horse racing meeting upon a track unless the track has been inspected by the board within 30 days prior to the date of application for a license and the track has been approved by the board as conforming to the racetrack safety standards set forth in subdivision (a) of Section 19481.

(b) The board shall, within 120 days of the effective date of this subdivision, adopt emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) to establish standards governing the employee housing provided to backstretch personnel at licensed racetracks. These regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare, shall be commensurate with the housing standards established in the Employee Housing Act (commencing



with Section 17000 of Division 13 of the Health and Safety Code), and shall consider the following:

(1) The health and safety of the human and equine population and the necessity for humans and horses to live in close proximity.

(2) The housing needs of state or county facilities with live racing meeting of no more than 43 days in duration that do not operate as year-round training facilities. The board shall specifically consider the different needs of these facilities compared to permanent facilities or other state and county facilities that function on a year-round basis, including state and county fair facilities that operate as a year-round training facilities where horses are stabled and workers live.

(3) Compliance of facilities with racing meetings of 19 days or less, even if they operate as a year-round training facility, with this subdivision shall be contingent on funding in the 2002–03 Budget Act.

These emergency regulations shall be submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations and shall be replaced by final, permanent regulations within 18 months of their adoption. Every racing association shall be in compliance with these housing standards by January 1, 2004.

(c) Commencing January 1, 2004, the board, with assistance from the California Department of Housing and Community Development or a local building department or other local entity designated by the jurisdiction in which the racetrack is located, shall annually inspect the living conditions of backstretch employee housing to ensure compliance with the housing standards established by the board, the findings or results of which shall be submitted to the board. No license shall be issued to a racing association to conduct a horse race meeting unless the board has inspected the housing conditions that exist on the racetrack's backstretch and determined the living conditions to be in compliance with the standards established by the board in subdivision (b).

(d) The board may assess a reasonable fee upon racing associations to defray the costs associated with the inspections provided for in subdivision (c).



Approved \_\_\_\_\_, 2001

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*Governor*

